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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,207	12/10/2003	Robert J. Lemire		4598
33963	7590	07/01/2005	EXAMINER	
ROBERT J. LEMIRE P.O. BOX 299 KINGS PARK, NY 11754			KING, ANITA M	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/731,207

Applicant(s)

LEMIRE, ROBERT J.

Examiner

Anita M. King

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

This is the third office action for application number 10/731,207, Spring Locking Hanging System, filed on December 10, 2003.

Election/Restrictions

Applicant's election without traverse of species IV in the reply filed on January 7, 2005 is acknowledged.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "37B" and "37A". Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "37" and "41". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the

Art Unit: 3632

Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings were received on April 28, 2005. These drawings are approved.

Specification

The disclosure is objected to because of the following informality: on page 6, line 12 the recitation of "46A" (second occurrence) should be changed to --46C--.

Appropriate correction is required.

Cancellation of Claims

Claims 2, 4, 5, 4, and 8 have been canceled per applicant's request.

Claim Objections

Claims 1 and 3 are objected to because of the following informalities: in claim 1, line 2, a comma should be inserted after "surface; and in claim 3, line 3, a comma should be inserted after "surface" (first occurrence). Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3632

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3, and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claim, thereby making the scope of the claim unclear. The preamble in claims 1 and 3 clearly indicate that a subcombination is being claimed, e.g., "a bracket and hanger system for positioning and locking an object onto a surface...." This language would lead the examiner to believe that the applicant intends to claim only the subcombination of "a bracket and hanger system," the object and the surface being only functionally recited. This presents no problem as long as the body of the claim also refers to the object and surface functionally.

The problem arises when the object and the surface are positively recited within the body of the claim, such as, "a bracket affixed to a surface, a hanger body affixed to the object," in lines 3-4 of claim 1 and in lines 3-4 of claim 3. There is an inconsistency within the claim; the preamble indicates subcombination, while in at least one instance in the body of the claim there is a positive recital of structure indicating that the combination of a bracket and hanger system and an object and a surface are being claimed. The examiner cannot be sure if applicant's intent is to claim merely the bracket and hanger system or the bracket and hanger system in combination with the object and/or the surface.

In formulating a rejection on the merits, the examiner is considering that the claims are drawn to the subcombination (a bracket and hanger system) and the claims will be rejected accordingly. If applicant indicates by amendment that the combination claim is the intention,

Art Unit: 3632

the language in the preamble should be made consistent with the language in the body of the claims. If the intent is to claim the subcombination, then the body of the claims must be amended to remove positive recitation of the combination.

To remedy the indefiniteness, the applicant should change the words "affixed" to --capable of being affixed--.

Claim 1 has ambiguous claim terminology where it is unclear whether latter recitations of originally cited terminology are intended to refer to the originally cited terms. It is unclear if "a surface," in line 3 of the claim is intended to refer to the original recitation of the term "a surface" in line 2 of the claim. If the applicant is not intending to positively recite the "surface" as an element of the claimed invention, the latter recitation should be changed to either --the surface-- or --said surface--. Also, see claims 3 and 6 for the same ambiguity.

Claim 6 recites the limitations "the supporting means" bridging lines 2-3 and "the support hooks" bridging lines 9 and 10. There is insufficient antecedent basis for these limitations in the claim.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Art Unit: 3632

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 3 of U.S. Patent No. 6,578,812. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used springs to enhance the locking engagement between the hooks and the bracket.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States; and
(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 3,567,170 to Albee, Jr. et al., hereinafter, Albee. Albee discloses a bracket and hanger system for positioning, leveling, and locking an object (30) onto a surface (10), composed of a bracket (50) capable of being affixed to the surface, a hanger body (20) capable of being affixed to the object and configured to be supported by the bracket, and to be locked onto the bracket by the action of a spring (35) and a hook (33).

Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,557,813 to Duggan. Duggan discloses a bracket and hanger system for positioning, leveling, and locking an object (50) onto a surface (70), composed of a bracket (10) capable of being affixed to the surface, a hanger body (12) capable of being affixed to the object and configured to be supported by the bracket, and to be locked onto the bracket by the action of a spring (38) and a hook (catch) (42).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 779,433 to Long

U.S. Patent 2,939,661 to Waller et al.

U.S. Patent 3,251,569 to Ryneerson

U.S. Patent 4,973,021 to Schuite

U.S. Patent 5,603,475 to Lim

U.S. Patent 5,947,438 to Lemire

U.S. Patent 5,992,813 to Keers

U.S. Patent 6,062,525 to Lemire

U.S. Patent 6,279,257 to Lemire

U.S. Patent 6,334,602 to Clarke


Long discloses a picture frame hanger. Waller et al. disclose a hanger bracket. Ryneerson discloses an adjustable hanger for a picture mounted to a surface. Schuite discloses a system for hanging pictures. Lim discloses a structure having a double beveled track

member. The Lemire references all disclose various types of picture frame hangers. Keers discloses a picture hanging system. Clarke discloses a track system for adjustably mounting objects to a structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anita M. King whose telephone number is (571) 272-6817. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anita M. King
Primary Examiner
Art Unit 3632

June 29, 2005